

UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

Act 157 of 1976

AN ACT to establish guidelines for the management and use of investments held by eleemosynary institutions and funds.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

The People of the State of Michigan enact:

451.1201 Short title.

Sec. 1. This act shall be known and may be cited as the “uniform management of institutional funds act”.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1202 Definitions.

Sec. 2. As used in this act:

(a) “Endowment fund” means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(b) “Gift instrument” means a will, deed, grant, conveyance, agreement memorandum, writing, or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

(c) “Governing board” means the body responsible for the management of an institution or of an institutional fund.

(d) “Historic dollar value” means the aggregate fair value in dollars of an endowment fund at the time it became an endowment fund, each subsequent donation to the fund at the time it is made, and each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

(e) “Institution” means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(f) “Institutional fund” means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include a fund held for an institution by a trustee that is not an institution or a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1203 Appropriation of net appreciation for expenditure.

Sec. 3. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by section 7. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1204 Restriction on expenditure of net appreciation.

Sec. 4. Section 3 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only income, interest, dividends, or rents, issues or profits, or to preserve the principal intact, or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of this act.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1205 Powers of governing board generally.

Sec. 5. In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to the type of investments a fiduciary may make, the governing board, subject to specific limitations set forth in the applicable gift instrument or in the applicable law other than the law relating to investments by a fiduciary, may:

(a) Invest and reinvest an institutional fund in real or personal property deemed advisable by the governing

board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government, or subdivision, or instrumentality thereof.

(b) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.

(c) Include all or any part of an institutional fund in a pooled or common fund maintained by the institution.

(d) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interest in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1206 Additional powers of governing board.

Sec. 6. Except as otherwise provided by the applicable gift instrument or by the applicable law relating to governmental institutions or funds, the governing board may:

(a) Delegate to its committees, officers, or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds.

(b) Contract with independent investment advisors, investment counsel or managers, banks, or trust companies to act in place of the board in investment and reinvestment of institutional funds.

(c) Authorize the payment of compensation for investment advisory or management services.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1207 Governing board to exercise ordinary business care and prudence.

Sec. 7. (1) In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. Persons to whom the governing board has delegated authority, or with whom the governing board has contracted, to act in its place in investment and reinvestment of institutional funds shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision.

(2) In exercising ordinary business care and prudence pursuant to subsection (1), the governing board or person to whom investment or reinvestment authority is delegated or with whom such authority is contracted shall consider the long- and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1208 Release of restriction imposed by gift instrument.

Sec. 8. (1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(2) If written consent of the donor cannot be obtained by reason of his death, disability or legal incapacity, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to a court of competent jurisdiction for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection shall not change an endowment fund to a fund that is not an endowment fund.

(3) A release under this section shall not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(4) This section does not limit the application of the doctrine of cy pres.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1209 Application and construction of act.

Sec. 9. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1210 Institution not prevented from making investment or guaranteeing obligations of

others.

Sec. 10. This act shall not be construed to prevent an institution otherwise authorized by the terms of the applicable gift instrument establishing an endowment fund, or not prohibited by the terms of the applicable gift instrument establishing an institutional fund which is not an endowment fund, from making an investment or guaranteeing the obligations of others to further the educational, religious, charitable, or other eleemosynary purpose of the institution, regardless of whether any financial return is anticipated or any capital gain or loss is actually incurred.

History: 1976, Act 157, Imd. Eff. June 17, 1976.